

**SUPREME COURT MINUTES
MONDAY, AUGUST 3, 1998
SAN FRANCISCO, CALIFORNIA**

S042737 In re Gerald A. Gallego
 on
 Habeas Corpus
 The order to show cause is discharged.

George, C.J.

We Concur:
Baxter, J.
Werdegar, J.
Chin, J.

Concurring Opinion by Mosk, J.

Concurring and Dissenting Opinion by Kennard, J.

Concurring and Dissenting Opinion by Brown, J.

S048929 In re Malcolm J. Robbins
 on
 Habeas Corpus
 The order to show cause is discharged.

George, C.J.

We Concur:
Baxter, J.
Werdegar, J.
Chin, J.

Concurring Opinion by Mosk, J.

Concurring and Dissenting Opinion by Kennard, J.

Concurring and Dissenting Opinion by Brown, J.

S063425 Foster-Gardner, Inc., Plaintiff and Appellant
v.
National Union Fire Insurance Company of Pittsburgh, PA et al.,
Defendants and Respondents
The judgment of the Court of Appeal is reversed.

Brown, J.

We Concur:
George, C.J.
Baxter, J.
Chin, J.

Dissenting Opinion by Kennard, J.

We Concur:
Mosk, J.
Werdegar, J.

S062931 County of Santa Clara, Appellant
v.
Delmer L. Perry et al., Respondents
The finality of the opinion in the above entitled matter is hereby
extended to and including August 24, 1998.

S042737 In re Gerald A. Gallego
on
Habeas Corpus
Petition for writ of habeas corpus denied.
Claims I, II, III, and IV are denied on the merits. To the extent
Claim II asserts that the trial court erred in failing to order a
competency hearing, it was raised and rejected on appeal, and hence
also is barred under *In re Waltreus* (1965) 62 Cal.2d 218, 225
(*Waltreus*). In addition, each claim is barred as untimely under *In re*
Robbins (Aug. 3, 1998, S048929) ___ Cal.4th ___, (*Robbins*), and *In*
re Clark (1993) 5 Cal.4th 750 (*Clark*).
Claim V is denied on the merits. To the extent Claim V reasserts
a claim that was raised and rejected on appeal, it is barred under

Waltreus, supra. To the extent Claim V presents a claim based on the appellate record but not raised or addressed on appeal, it should have been raised on appeal and is barred under *In re Dixon* (1953) 41 Cal.2d 756, 759 (*Dixon*). In addition, Claim V is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim VI is denied on the merits. In addition, it is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claims VII, VIII, and IX are denied on the merits. To the extent these claims reassert claims raised and rejected on appeal, they are barred under *Waltreus, supra*. To the extent these claims are based on the appellate record but were not raised or addressed on appeal, they are barred under *Dixon, supra*. In addition, each claim is barred as untimely under *Robbins, supra*, and *Clark, supra*. Claims X & XI are denied on the merits. In addition, each claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claims XII & XIII are denied on the merits. In addition, each claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claims XIV & XV are denied on the merits. Each is also barred under *Waltreus, supra*. In addition, each claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim XVI is denied on the merits. Subparts A and D thereof are barred under *Waltreus, supra*. Subparts B and C thereof are barred as waived under *People v. Green* (1980) 27 Cal.3d 1, 27-34, and under *Dixon, supra*. In addition, the claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claims XVII and XVIII are denied on the merits. Claim XVIII also is barred under *Waltreus, supra*. In addition, each claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim XIX is denied on the merits. Subparts A(1)-(3) and B (1) are barred under *Dixon, supra*, and the remaining subparts of Claim XIX are barred under *Waltreus, supra*. In addition, the claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim XX is denied on the merits. To the extent it reasserts a claim that was raised and rejected on appeal, it is barred under *Waltreus, supra*. To the extent it presents a claim based upon the appellate record but not raised or addressed on appeal, it is barred under *Dixon, supra*. In addition, the claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim XXI is denied on the merits. It also is barred under

Waltreus, supra. In addition, it is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim XXII is denied on the merits. To the extent it reasserts a claim that was raised and rejected on appeal, it is barred under *Waltreus, supra*. To the extent it presents a claim based upon the record but not raised or addressed on appeal, it is barred under *Dixon, supra*. In addition, the claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claims XXIII and XXIV are denied on the merits. Each also is barred under *Waltreus, supra*. In addition, each claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim XXV is denied on the merits. It also is barred under *Dixon, supra*. In addition, it is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim XXVI is denied on the merits. It also is barred under *Waltreus, supra*. In addition, it is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim XXVII is denied on the merits. It also is barred under *Dixon, supra*. In addition, it is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claims XXVIII, XXIX, XXX, & XXXI are denied on the merits. Each also is barred under *Waltreus, supra*. In addition, each claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim XXXII is denied on the merits. In addition, it is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim XXXIII is denied on the merits. It also is barred under *Dixon, supra*. In addition, it is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim XXXIV is denied on the merits. In addition, it is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim XXXV is denied on the merits. It also is barred under *Waltreus, supra*. In addition, it is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Insofar as any claim asserts ineffective assistance of immediately preceding appellate and habeas corpus counsel, it is denied solely on the merits. (*Robbins, supra*, at p. 57, fn. 35.)

Mosk, J., and Brown, J., would deny the petition solely on the merits.

S048929 In re Malcolm J. Robbins
 on
 Habeas Corpus

Petition for writ of habeas corpus denied.

Claim A is denied on the merits. In addition, it is barred as untimely under *In re Robbins* (Aug. 3, 1998, S048929) ___ Cal.4th ___ (*Robbins*), and *In re Clark* (1993) 5 Cal.4th 750 (*Clark*).

Claims B, C, and D are denied on the merits. To the extent they are based solely on the record, they should have been raised on appeal and are barred under *In re Dixon* (1953) 41 Cal.2d 756, 759 (*Dixon*). In addition, each claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claims E & F are denied on the merits. To the extent claim F is based on the appellate record, it is barred under *In re Waltreus* (1965) 62 Cal.2d 218, 225 (*Waltreus*). In addition, claim F is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim G is denied on the merits and barred under *Dixon, supra*. In addition, it is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim H is denied on the merits. Paragraph 2 thereof is barred under *Dixon, supra*, and paragraph 4 thereof is barred as waived under *People v. Green* (1980) 27 Cal.3d 1, 27-34, and barred under *Dixon, supra*. In addition, the claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

The four subclaims advanced in Claim I (pars. 7-12, the Foster subclaim; pars. 13-14, the Fitzgerald/Halliday subclaim; pars. 15-18, the Holmes subclaim; and pars. 20-22, the Garton subclaim) each is denied on the merits. In addition, the Holmes subclaim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim J is denied on the merits. In addition, the claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claims K, L, M, N, & O are denied on the merits and are barred under *Dixon, supra*. In addition, each claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim P is denied on the merits. Paragraph 2 thereof is barred under *Waltreus, supra*, and paragraphs 3, 4, and 5 thereof are barred under *Dixon, supra*. In addition, the entire claim is barred as

untimely under *Robbins, supra*, and *Clark, supra*.

Claim Q is denied on the merits and barred under *Dixon, supra*. In addition, it is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim R is denied on the merits. It also is barred under *Waltreus, supra*, and, to the extent it is based on constitutional theories not previously raised and rejected on appeal, it is barred under *Dixon, supra*. In addition, it is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim S is denied on the merits and barred under *Dixon, supra*. In addition, it is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim T is denied on the merits, and paragraph 2 thereof is barred under *Dixon, supra*. In addition, the claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim U is denied on the merits. In addition, the claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claims V & W are denied on the merits and barred under *Dixon, supra*. In addition, each claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim X is denied on the merits, and to the extent it is based solely on the record, it is barred under *Dixon, supra*. In addition, the claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claims Y & Z are denied on the merits and barred under *Dixon, supra*. In addition, each claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claims AA, AB, AC, AD, AE, AF, AG, & AH are denied on the merits, and to the extent they are based solely on the record, they are barred under *Dixon, supra*. In addition, each claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim AI is denied on the merits. To the extent this claim or any of its subparts was raised and rejected on appeal, it is barred under *Waltreus, supra*; to the extent this claim or any of its subparts was not raised on appeal, it is barred under *Dixon, supra*. In addition, the claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim AJ is denied on the merits and, to the extent it is based solely on the record, it is barred under *Dixon, supra*. In addition, the claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim AK is denied on the merits.

Claim AL is denied on the merits. To the extent this claim is

premised on claims raised and rejected on appeal, it is barred by *Waltreus, supra*. To the extent this claim is premised on claims that should have been, but were not, presented on appeal, it is barred under *Dixon, supra*. In addition, the claim is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim AM is denied on the merits. In addition, it is barred as untimely under *Robbins, supra*, and *Clark, supra*.

Claim AN is denied on the merits. To the extent paragraph 9 thereof is based on the appellate record, it also is barred under *Dixon, supra*.

Insofar as any claim asserts ineffective assistance of immediately preceding appellate and habeas corpus counsel, it is denied solely on the merits. (*Robbins, supra*, at p. 57, fn. 35.)

Mosk, J., and Brown, J., would deny the petition solely on the merits.

S067887 In re Stephen Louis Mitcham
 on
 Habeas Corpus

On application of respondent and good cause appearing, it is ordered that the time to serve and file respondent's informal response to the petition for writ of habeas corpus is extended to and including August 12, 1998.

S068741 People, Appellant
v.
Cheryl Jeanene Woods et al., Respondents

On application of respondent Cheryl Jeanene Woods, and good cause appearing, it is hereby ordered that the time to serve and file respondent's answer brief on the merits is extended to and including August 29, 1998.

S068741 People, Appellant
v.
Cheryl Jeanene Woods et al., Respondents

On application of respondent William B. Benson, and good cause appearing, it is hereby ordered that the time to serve and file respondent's answer brief on the merits is extended to and including August 29, 1998.

S069442 People, Respondent

v.

James R. Metters, Jr., Appellant

On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's opening brief on the merits is extended to and including August 28, 1998.

S069522 Peter Alan Kasler, et al, Appellants

v.

Daniel E. Lungren, et al., Respondents

On application of appellants and good cause appearing, it is ordered that the time to serve and file appellants' answer brief on the merits is extended to and including September 18, 1998.